



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenants stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 9, 2016. The landlord disputed that the package was not received, but stated that she was aware of the tenants' application for dispute and the issues. The landlord stated that she was able to proceed with the hearing. The landlord submitted in support of this application a photocopy of the returned envelope showing that the package was addressed to the landlord at the address provided by the landlord's agent. The landlord stated that she served the tenants with her submitted documentary evidence package by serving it to the tenants in person on January 30, 2017. The tenants confirmed receipt of this package. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation under the Act, regulations or tenancy agreement and recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on July 1, 2015 on a fixed term tenancy ending on June 30, 2016 as shown by the submitted copy of the signed tenancy agreement dated May 28, 2015. The monthly rent was \$2,450.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$1,225.00 was paid.

The tenants seek a monetary claim of \$7,550.00 which consists of:

\$2,450.00	Compensation re: Sec. 49 Notice
\$4,900.00	Compensation re: Landlord failing to comply with Sec. 51
\$200.00	Compensation re: Tenant's cancellation fee for flight ticket

The tenants provided affirmed testimony that they were served with a 2 Month Notice to End Tenancy issued for Landlords Use (the 2 Month Notice) dated May 12, 2016 in person by the landlord's agent (her son, M.H.) and the landlord. The landlord disputes this claim. The tenants referred to document #2, a copy of the 2 Month Notice dated May 12, 2016 which was signed by the landlord's son, M.H. The 2 Month Notice sets out that an effective end of tenancy date of July 31, 2016 and that it was being given for:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The landlord argued that her son, M.H. was not authorized to act as her agent and that she did not authorize him to issue the 2 Month Notice. The landlord stated that the tenants' should have contacted her directly.

The tenants stated that they were familiar with the landlord's son and had no reason to doubt its' validity. The tenants stated that the 2 Month Notice gave a different address for the landlord and that the tenants' responded to the notice at that alternate address. The tenants' stated that a letter dated May 20, 2016 was received by the landlord's son on May 20, 2016 in person at the address provided by the landlord's agent. The letter states that the tenants would be exercising their right by providing 10 days notice after receiving the 2 Month Notice to vacate the premises and vacate it on May 31, 2016. The tenants noted that the landlord's agent, M.H. signed in receipt of the notice next to the tenants' signatures. The tenants' stated that the landlord failed to comply with the 2 Month Notice and did not provide compensation equal to 1 Months rent. As well, the

tenants stated that the landlord failed to comply with the 2 Month Notice and re-rented the unit for a higher rent by immediately advertising the unit for rent.

The tenants stated that an airline ticket for M.K. was cancelled to allow the tenants to begin searching for a new rental unit. The tenants provided direct testimony that the flight was booked for travel from May 13, 2016 to July 13, 2016 to Iran. The tenants stated that they were unsure of how long it would take them to locate a new rental and decided to cancel the flight to begin searching.

In support of this application, the tenants have provided:

- A copy of the signed tenancy agreement dated May 28, 2015

- A copy of the 2 Month Notice dated May 12, 2016

- A copy of the signed letter dated May 20, 2016 advising the landlord of giving 10 days notice to vacate the rental unit

- A copy of an online ad showing the rental unit advertised for rent at a higher rent to begin June 1, 2016

- A copy of the tenants' credit card statement showing that an airline ticket was refunded minus a \$200.00 charge.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the evidence of the tenants over that of the landlord. I find on a balance of probabilities that the landlord's son, M.H. acted as the landlord's agent and served the tenants with the 2 Month Notice dated May 12, 2016. I reject the landlord's argument that her son, M.H. did not act for her and that she was not aware of his actions. As such, I find that the tenants' are entitled to compensation as per section 51 which is equal to \$2,450.00 as per the signed tenancy agreement.

The tenants' second item of claim, I find based upon the undisputed affirmed evidence of the tenants that having been served with the 2 Month Notice, the landlord failed to

comply with the notice and is subject to section 51 (2) of the Act. The tenants are entitled to compensation of equal to double the monthly rent which is \$4,900.00.

As for the tenants third item of claim for \$200.00 for cancelling an airline ticket, I find that the tenants have failed. Although the tenants indicated that they were unsure of how long it would take to locate a new rental, the tenants chose to cancel the flight and gave 10 days early notice to the landlord to vacate the rental unit on May 20, 2016. I note that the original effective end of tenancy date was set for July 31, 2016 which still would have allowed for time by the tenants to locate and move. This portion of the tenants claim is dismissed.

The tenants have established a total monetary claim of \$7,350.00.

I find that the tenants having been substantially successful in their application are entitled to recovery of the \$100.00 filing fee.

I note in closing that both parties confirmed the addresses that were provided by the tenants in their application for dispute as valid mailing address for delivery of this decision.

### Conclusion

The tenants are granted a monetary order for \$7,450.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 07, 2017

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Residential Tenancy Branch